TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 203.

THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, PLAINTIFF IN ERROR,

vs.

DONALD MORRISON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

FILED FEBRUARY 6, 1899.

(17,288.)

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a In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING Company, a Corporation of the State of Illinois, Defendant. } No. 653.

Transcript on Appeal.

Appeal from the circuit court of the United States for the district of Washington to the Supreme Court of the United States.

1 DONALD MORRISON, Plaintiff,
vs.
NORTH AMERICAN TRANSPORTATION AND TRADING Company, Defendant. } No. 24762.

Removal from the superior court of King county to the U. S. circuit court for the district of Washington, northern div.

2 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING Company, a Corporation of the State of Illinois, Defendant. } Summons.

The State of Washington to The North American Transportation and Trading Company, a corporation of the State of Illinois, defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid, and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint, which will be filed with the clerk of said court, or a copy of which is herewith served upon you, and you are required to answer the said complaint and within the time aforesaid to serve a copy of your answer on the undersigned attorneys of the plaintiff, whose post-office address is the place below specified. The county aforesaid is hereby designated by the plaintiff as the place of trial of the above-entitled cause.

ARTHUR & WHEELER,
Attorneys for Plaintiff.

Post-office address, Seattle, King county, Washington.
Office address, rooms 305, 306, 307 New York block, Seattle, Washington.

3 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING Company, a Corporation of the State of Illinois, Defendant. } Complaint.

The plaintiff complains of the defendant and for cause of action alleges:

For a first cause of action:

I.

That during all the times hereinafter mentioned the plaintiff was and now is a citizen of the United States and a resident and citizen of the State of Minnesota.

II.

That during all the times hereinafter mentioned the defendant was and still is a corporation organized and existing under and by virtue of the laws of the State of Illinois and lawfully engaged in the business hereinafter mentioned in the State of Washington.

III.

That during all said times the defendant was and still is engaged in the business of a common carrier of passengers, their luggage and goods, for hire along the route and between the points hereinafter described and mentioned, and the agreement hereinafter mentioned was made with it at the city of Seattle, Washington.

IV.

That on or about the 3d day of August, 1897, the defendant represented to the plaintiff that it would carry and transport
4 him and his luggage, hereinafter mentioned, by means of certain vessels, steam vessels, and boats chartered, possessed, or owned by it, from the city of Seattle, in said State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to plaintiff at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City in supplying and equipping him in the business he was thereabout to pursue for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

V.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, the plain-

tiff purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars ($200).

VI.

That before said payment by the plaintiff and as a condition precedent to the purchase of said ticket the defendant engaged, agreed, and undertook safely to carry and transport plaintiff and his said luggage, hereinafter mentioned, to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise at said schedule prices on or before said last named date, and otherwise keep and perform said agreement and said representations.

VII.

That thereupon, at said city of Seattle, the plaintiff entered upon and became a passenger upon said steam vessel, and delivered to defendant his said luggage, hereinafter mentioned, in pursuance of said ticket and agreement to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VIII.

That the defendant so negligently and carelessly demeaned itself in the premises aforesaid that it wholly failed, neglected, and refused to carry plaintiff or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to plaintiff said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with the plaintiff.

IX.

That the defendant did not carry or transport plaintiff or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

X.

That the plaintiff fully performed all the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

6 XI.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement plaintiff was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said city of Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of seventy-two dollars and fifty cents ($72.50); that plaintiff did so return to said city of Seattle and arrived there on or about the 18th day of October, 1897.

XII.

That if plaintiff had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business and secured wages and profits at the rate of three dollars per day during all said time intervening between said 3d day of August, 1897, and said 17th day of October, 1897.

XIII.

That if the defendant had within the time aforesaid carried and transported plaintiff and his said luggage to said Dawson City and complied with its agreement, as aforesaid, plaintiff could have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City and thereby secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XIV.

That by reason of the premises plaintiff has been and is wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said Dawson City at any time
7 earlier than a period of nine months subsequent to said September 15, 1897.

XV.

That the defendant did not safely carry and deliver plaintiff's said luggage to said Dawson City, but, on the contrary, so misbehaved in that regard as such common carrier that a portion of plaintiff's luggage, to wit, one certain package of his goods, wares, and merchandise, of the value of twenty-nine dollars and twenty-five cents ($29.25), was wholly destroyed and lost, to his damage in said sum of twenty-nine dollars and twenty-five cents ($29.25).

XVI.

That by reason of the premises the plaintiff has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of the said premises in the total sum of two thousand three hundred and one dollars and seventy-five cents ($2,301.75).

XVII.

That prior to the commencement of this action plaintiff duly demanded of the defendant the payment to him of the aforesaid damage and sums of money expended by him, as aforesaid.

XVIII.

That the defendant has wholly failed, neglected, and refused to repay plaintiff for his said expenditures and outlay and to pay said damage or any part thereof.

XIX.

That there is now due — owing to the plaintiff from the defendant, by reason of the premises, for said expenditures, outlay, and damage, the sum of two thousand three hundred and one dollars and seventy-five cents ($2,301.75).

8 For a second cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to Charles B. Lambert that it would carry and transport him and his luggage, by means of certain vessels, steam vessels, and boats chartered, possessed, or owned by it, from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City, in supplying and equipping him in the business he was thereabout to pursue, for the period of one year from the date of arrival at said Dawson City hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, said Lambert purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel, named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon
9 said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars ($200).

IV.

That before said payment by said Lambert and as a condition precedent to the purchase of said ticket the defendant engaged, agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise, at said schedule prices, on or before said last-named date and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Lambert entered upon and became a passenger upon said steam vessel and delivered to defendant his said luggage in pursuance of said ticket and agreement, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Lambert or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

10 VII.

That the defendant did not carry or transport said Lambert or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Lambert fully performed all the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Lambert was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum

of sixty-one dollars and fifty cents ($61.50); that said Lambert did so return to said Seattle, and arrived there on or about the 17th day of October, 1897.

X.

That if said Lambert had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business, and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had within the time aforesaid carried
11 and transported said Lambert and his said luggage to said Dawson City and complied with its agreement aforesaid he could and would have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Lambert has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Lambert has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand two hundred and sixty-one dollars and fifty cents ($2,261.50).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant; all of which was refused.

XV.

That prior to the commencement of this action said Lambert duly sold, assigned in writing, and transferred all of the aforesaid claim and demand to plaintiff for a valuable consideration, who is now the owner thereof.

12 XVI.

That there is now due and owing to the plaintiff from the defendant by reason of the premises for said expenditures, outlays,

and damage the sum of two thousand two hundred and sixty-one dollars and fifty cents ($2,261.50).

For a third cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to Lewis F. Overstreet that it would carry and transport him and his luggage by means of certain vessels, steam vessels, and boats chartered, possessed, or owned by it from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City in supplying and equipping him in the business he was thereabout to pursue for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations,
13 said Overstreet purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel named the "Cleveland" then about to sail from said city of Seattle on said voyage and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars ($200).

IV.

That before said payment by said Overstreet, and as a condition precedent to the purchase of said ticket, the defendant engaged, agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise at said schedule prices on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Overstreet entered upon and became a passenger upon said steam vessel, and delivered

to defendant his said luggage in pursuance of said ticket and agreement to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Overstreet or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Overstreet or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Overstreet fully performed all of the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Overstreet was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of one hundred and three dollars and twenty-five cents ($103.25); that said Overstreet did so return to said Seattle and arrive there on or about the 17th day of October, 1897.

X.

That if said Overstreet had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business, and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had within the time aforesaid carried and transported said Overstreet and his said luggage to said Dawson

City and complied with its agreement aforesaid he could and would have obtained employment and engaged in business by him competent to perform and transact, at or about said Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Overstreet has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Overstreet has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand three hundred and three dollars and twenty-five cents ($2,303.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant, all of which was refused.

XV.

That prior to the commencement of this action said Overstreet duly sold and in writing assigned and transferred all of the
16 aforesaid claim and demand to plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant, by reason of the premises, for said expenditures, outlay, and damage the sum of two thousand three hundred and three dollars and twenty-five cents ($2,303.25).

For a fourth cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to William F. Fitzgerald that it would carry and transport him and his luggage by means of certain vessels, steam vessels, and

boats, chartered, possessed, or owned by it, from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City in supplying and equipping him in the business he was thereabout to pursue for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the
17 defendant to keep and fulfill each and all of said representations, said Fitzgerald purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars ($200).

IV.

That before said payment by said Fitzgerald and as a condition precedent to the purchase of said ticket, the defendant engaged, agreed, and undertook to safely carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise, at said schedule prices, on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Fitzgerald entered upon and became a passenger upon said steam vessel and delivered to defendant his said luggage, in pursuance of said ticket and agreement, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Fitzgerald or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and re-
18 fused to comply with its said agreement to sell and deliver to him goods, wares, and merchandise within the time afore-

said or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Fitzgerald or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Fitzgerald fully performed all the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Fitzgerald was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation, or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of sixty-three dollars and twenty-five cents ($63.25); that said Fitzgerald did so return to said Seattle and arrived there on or about the 17th day of October, 1897.

X.

That if said Fitzgerald had not proceeded upon said journey, as aforesaid, he could and would have obtained employment
19 and engaged in business and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had within the time aforesaid carried and transported said Fitzgerald and his said luggage to said Dawson City and complied with its agreement aforesaid he could and would have obtained employment and engaged in business, by him competent to perform and transact, at or about said Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Fitzgerald has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier

than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Fitzgerald has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises in the total sum of two thousand two hundred and sixty-three dollars and twenty-five cents ($2,263.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant, all of which was refused.

20

XV.

That prior to the commencement of this action said Fitzgerald duly sold and in writing assigned and transferred all of the aforesaid claim and demand to plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant by reason of the premises, for said expenditure, outlay, and damage, the sum of two thousand two hundred and sixty-three dollars and twenty-five cents ($2,263.25).

For a fifth cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to J. P. Rankin that it would carry and transport him and his luggage, by means of certain vessels, steam vessels and boats, chartered, possessed, or owned by it, from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City, in supplying and equipping him in the business he was thereabout to pursue, for the period of one year from the date of arrival at said Dawson

21 City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, said Rankin purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars (200).

IV.

That before said payment by said Rankin, and as a condition precedent to the purchase of said ticket, the defendant engaged, agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise at said schedule prices on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Rankin entered upon and became a passenger upon said steam vessel and delivered to defendant his said luggage in pursuance of said ticket and agreement, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused
22 to carry said Rankin or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Rankin or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Rankin fully performed all the conditions and agreements required to be performed on his part under the stipulations

contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Rankin was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expense the sum of sixty-one dollars and twenty-five cents ($61.25); that said Rankin did so return to said Seattle and arrived there on or about the 17th day of October, 1897.

23 X.

That if said Rankin had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had, within the time aforesaid, carried and transported said Rankin and his said luggage to said Dawson City and complied with its agreement aforesaid he could and would have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Rankin has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Rankin has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant, all of which was refused.

24 XV.

That prior to the commencement of this action said Rankin duly sold and in writing assigned and transferred all of the aforesaid claim and demand to plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant by reason of the premises, for said expenditures, outlay, and damage, the sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

25 For a sixth cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to Samuel Funkenstein that it would carry and transport him and his luggage, by means of certain vessels, steam vessels and boats chartered, possessed, or owned by it, from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him, at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City in supplying and equipping him in the business he was thereabout to pursue for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, said Funkenstein purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel, named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred
26 dollars ($200).

IV.

That before said payment by said Funkenstein, and as a condition precedent to the purchase of said ticket, the defendant engaged,

agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise at said schedule prices on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Funkenstein entered upon and became a passenger upon said steam vessel, and delivered to defendant his said luggage in pursuance of said ticket and agreement, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Funkenstein or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Funkenstein or his said luggage or any thereof farther on said route or
27 nearer to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Funkenstein fully performed all of the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Funkenstein was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of sixty-one dollars and twenty-five cents ($61.25); that said Funkenstein did so return to said Seattle and arrived there on or about the 17th day of October, 1897.

X.

That if said Funkenstein had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business, and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had, within the time aforesaid, carried and transported said Funkenstein and his said luggage to said Dawson City and complied with its agreement aforesaid he could
28 and would have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Funkenstein has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Funkenstein has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant, all of which was refused.

XV.

That prior to the commencement of this action said Funkenstein duly sold and in writing assigned and transferred all of the aforesaid claim and demand to the plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant by reason of the premises, for said expenditures, outlay, and damage, the sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

29 For a seventh cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to Elijah Griffith that it would carry and transport him and his luggage, by means of certain vessels, steam vessels and boats chartered, possessed, or owned by it, from the city of Seattle, in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City, in supplying and equipping him in the business he was thereabout to pursue, for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, said Griffith purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel, named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid
30 the defendant therefor the sum of two hundred dollars ($200).

IV.

That before said payment by said Griffith, and as a condition precedent to the purchase of said ticket, the defendant engaged, agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise at said schedule prices on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Griffith entered upon and became a passenger upon said steam vessel and delivered to defendant his said luggage in pursuance of said ticket and agree

ment, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Griffith or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in carrying him and his said luggage, as aforesaid, and refused and failed to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Griffith or his said luggage or any thereof farther on said route or nearer
31 to said Dawson City than a point on said Yukon river about four hundred miles distant from said Dawson City.

VIII.

That said Griffith fully performed all of the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Griffith was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of sixty-one dollars and twenty-five cents ($61.25); that said Griffith did so return to said Seattle, and arrived there on or about the 17th day of October, 1897.

X.

That if said Griffith had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business, and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said third day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had within the time aforesaid carried and transported said Griffith and his said luggage to said Dawson City

and complied with its agreement aforesaid he could and
32 would have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Griffith has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Griffith has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditure and outlay was duly made upon the defendant, all of which was refused.

XV.

That prior to the commencement of this action said Griffith duly sold and in writing assigned and transferred all of the aforesaid claim and demand to the plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant, by reason of the premises, for said expenditures, outlay, and damage, the sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

33 For an eighth cause of action:

I.

The plaintiff repeats and reiterates all of the matters and things set forth and alleged in paragraphs I, II, and III of his first cause of action herein.

II.

That on or about the 3d day of August, 1897, the defendant represented to W. G. Thompson that it would carry and transport him and his luggage, by means of certain vessels, steam vessels and boats, chartered, possessed, or owned by it, from the city of Seattle

in the State of Washington, by the way of St. Michaels and the Yukon river, in the Territory of Alaska, to Dawson City, in the Northwest Territory, in the Dominion of Canada, and supply him with suitable and proper board and victuals on said journey, and would at said last-named point sell and deliver to him, at reasonable prices, to wit, at the prices specified in the schedule hereunto attached and marked "Exhibit A," sufficient goods, wares, and merchandise for his use and requirements at said Dawson City, in supplying him and equipping him in the business he was thereabout to pursue, for the period of one year from the date of arrival at said Dawson City, hereinafter specified.

III.

That thereupon, in consideration of the agreement of the defendant to keep and fulfill each and all of said representations, said Thompson purchased of the defendant a ticket entitling him to passage and board, as aforesaid, and the carrying of his said luggage upon the defendant's then chartered steam vessel, named the "Cleveland," then about to sail from said city of Seattle on said voyage, and upon the vessels or boats of the defendant plying upon said Yukon river from said St. Michaels to said Dawson City, and paid the defendant therefor the sum of two hundred dollars ($200).

34

IV.

That before said payment by said Thompson and as a condition precedent to the purchase of said ticket the defendant engaged, agreed, and undertook safely to carry and transport him and his said luggage to said Dawson City on or before the 15th day of September, 1897, and to sell and deliver to him at said last-named point the said goods, wares, and merchandise, at said schedule prices, on or before said last-named date, and otherwise keep and perform said agreement and said representations.

V.

That thereupon, at said city of Seattle, said Thompson entered upon and became a passenger upon said steam vessel and delivered to defendant his said luggage, in pursuance of said ticket and agreement, to be carried and transported, as aforesaid, to said Dawson City, and said vessel thereupon departed from said Seattle upon its said voyage.

VI.

That the defendant so negligently and carelessly demeaned itself in the premises that it wholly failed, neglected, and refused to carry said Thompson or his said luggage to said Dawson City within the time aforesaid or at all, and wholly failed, neglected, and refused to comply with its said agreement to sell and deliver to him said goods, wares, and merchandise within the time aforesaid or at all, and wholly failed, neglected, and refused to perform its duty in

carrying him and his said luggage, as aforesaid, and refused to keep its said agreement with him.

VII.

That the defendant did not carry or transport said Thompson or his said luggage or any thereof farther on said route or nearer to said Dawson City than a point on said Yukon river about
35 four hundred miles distant from said Dawson City.

VIII.

That said Thompson fully performed all the conditions and agreements required to be performed on his part under the stipulations contained in said ticket and said agreement entered into by and between him and the defendant.

IX.

That by reason of the premises and the refusal and failure of the defendant to perform its aforesaid duty and agreement said Thompson was unable thence hitherto to proceed or travel to said Dawson City by any other means or route of transportation or to procure the transportation of his said luggage thither, and was compelled to return to said Seattle, and was thereby compelled to expend and did expend for his board and necessary travelling expenses the sum of sixty-one dollars and twenty-five cents ($61.25); that said Thompson did so return to said Seattle, and arrived there on or about the 17th day of October, 1897.

X.

That if said Thompson had not proceeded upon said journey, as aforesaid, he could and would have obtained employment and engaged in business, and thereby secured wages and profits at the rate of three dollars per day during all said time intervening between said 3d day of August, 1897, and said 17th day of October, 1897.

XI.

That if the defendant had within the time aforesaid carried and transported said Thompson and his said luggage to said Dawson City and complied with its agreement aforesaid he could and would have obtained employment and engaged in business by him com-
petent to perform and transact at or about said Dawson City
36 and thereby have secured wages and profits at the rate of fifteen dollars ($15) per day continuously from said September 15th, 1897, for the period of the year thence next ensuing.

XII.

That by reason of the premises said Thompson has been wholly unable to travel to said Dawson City by any route or means of travel by which he could arrive at said place at any time earlier than a period of nine months subsequent to said September 15th, 1897.

XIII.

That by reason of the premises said Thompson has wholly lost all of said employment and time and all of said wages and profits, to his damage in the sum of two thousand dollars ($2,000), and by reason of said premises is damaged in the total sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

XIV.

That prior to the commencement of this action demand for the payment of the aforesaid damage and the repayment of said expenditures and outlay was duly made upon the defendant, all of which was refused.

XV.

That prior to the commencement of this action said Thompson duly sold and in writing assigned and transferred all of the aforesaid claim and demand to plaintiff for a valuable consideration, who is now the owner thereof.

XVI.

That there is now due and owing to the plaintiff from the defendant by reason of the premises for said expenditures, outlay, and damage the sum of two thousand two hundred and sixty-one dollars and twenty-five cents ($2,261.25).

37 Wherefore plaintiff demands judgment against the defendant by reason of said several causes of action for the sum of eighteen thousand one hundred and seventy-three dollars and fifty cents ($18,173.50), and for the costs and disbursements of this action.

ARTHUR & WHEELER.
Attorneys for Plaintiff.

STATE OF WASHINGTON, } ss.:
County of King, }

Donald Morrison, being first duly sworn, on oath says: I am the plaintiff in the above entitled action. I have heard read the foregoing complaint, know the contents thereof, and the same is true as I verily believe.

DONALD MORRISON.

Subscribed and sworn to before me this 17th day of November, 1897.

RALPH W. EMMONS,
Notary Public in and for the State of Washington, Residing at Seattle, Wash.

Filed Nov. 30, 1897.
GEO. M. HOLLOWAY, *Clerk.*

38 EXHIBIT A.

Schedule of Prices of Goods.

8	pounds	roast beef, 4 cans	3.00
6	pounds	mutton, 1 can	2.25
8	"	lunch beef	3.00
8	"	pig's feet	3.00
8	pounds	corn beef	3.00
8	"	brawn	3.00
6	"	lunch tongue	3.00
5	"	boneless ham	2.00
8	"	sausage	3.00
4	"	kidneys	1.50
4	"	clams	2.00
20	"	candles	7.50
200	"	flour	24.00
80	"	beans	12.00
15	"	sauerkraut	3.00
14	"	evap. potatoes	14.00
10	"	pickles	2.50
4	"	pears	1.00
2	"	pineapple	.75
2	"	apricots	.75
2	"	plums	.50
2	"	cherries	.75
3	"	sweet potatoes	.75
4	"	string beans	1.00
2	"	corn	.50
4	"	cabbage	1.00
2	"	tomatoes	.50
100	"	bacon	40.00
45	"	ham	18.00
10	"	c. meal	2.00
10	"	rolled oats	2.00
50	"	rice	12.50
10	"	lard	2.50
10	"	salt	2.00
5	"	tea	5.
10	"	coffee	5.00
1	gal.	syrup	2.50

39 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant. } Interrogatories.

To the above-named defendant:

Please take notice that the plaintiff has filed in the office of the clerk of the above entitled court the interrogatories hereinafter set forth for the discovery of facts and documents material to the support of this action, to be answered on oath by the defendant, and the plaintiff hereby propounds said interrogatories to you and hereby demands and requires that you make true, full, and complete answer to each thereto upon oath, and that within the time required by law, to wit, within twenty days from the date of the service of the said interrogatories upon you, you file in the office of said clerk such answers to said interrogatories, duly subscribed and sworn to by the defendant, and serve upon the undersigned attorneys of the plaintiff a copy of the same.

Interrog. No. 1. State whether or not you are a corporation.

Interrog. No. 2. If you state that you are a corporation, state whether or not your organization is made pursuant to the laws of any State of the United States; and, if so, under the laws of what State said organization is had, and give the date of such incorporation.

Interrog. No. 3. State whether or not you have complied with the laws of the State of Washington for transacting business in said State.

Interrog. No. 4. State whether or not you are lawfully engaged in business in the State of Washington.

Interrog. No. 5. State whether or not at any time between
40 the 1st day of August, 1897, and the 1st day of November, 1897, you were engaged in the business of a common carrier of passengers.

Interrog. No. 6. State whether or not at any time between the 1st day of August, 1897, and the 1st day of November, 1897, you were engaged in the business of a common carrier of passengers and their luggage.

Interrog. No. 7. State whether or not you were engaged in the carrying of passengers and their luggage for hire during said time.

Interrog. No. 8. State whether or not you were engaged in the business of carrying passengers and their luggage from the city of Seattle, in the State of Washington, to Dawson City, in the Northwest Territory, in the Dominion of Canada, during the time last aforesaid.

Interrog. No. 9. State whether or not you were engaged in such business of carrying passengers between said points upon or by

vessels, steam vessels, or boats by way of St. Michaels and the Yukon river during said time.

Interrog. No. 10. State whether or not you had under charter or possessed during any of said time and employed on said route that certain steam vessel known as the steamer Cleveland.

Interrog. No. 11. State whether or not you possessed during any of said time and employed on said route or any part thereof that certain steam vessel known as the J. J. Healy, and state the names of such other vessels as you employed upon said river in said business.

Interrog. No. 12. State whether or not on or about the 3d day of August, 1897, you sold plaintiff a ticket entitling him to transportation upon either of said steamers between said points.

Interrog. No. 13. If you answer interrog. No. 12 in the affirmative, state upon which of said steamers said ticket entitled the plaintiff to such transportation, and state what serial number, if any,
41 you assigned to said ticket and what sum of money the plaintiff paid you for said ticket, and state whether said ticket entitled plaintiff to the transportation of any luggage; and, if so, how much.

Interrog. No. 14. State whether or not you received plaintiff upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 15. State whether or not you took up and received said ticket back from plaintiff while on said voyage; and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 16. State whether you received any luggage of plaintiff upon said vessel aforesaid; and, if so, state how much was so received.

Interrog. No. 17. State whether you carried plaintiff from said Seattle to said Dawson City.

Interrog. No. 18. State whether you carried plaintiff's luggage from said Seattle to said Dawson City, or any thereof.

Interrog. No. 19. State the date on which said vessel Cleveland departed from said Seattle upon said voyage.

Interrog. No. 20. State the names of any other boats belonging to your company plying upon the waters of said Yukon river during said time.

Interrog. No. 21. State whether any boat employed by you upon said river during said time traversed said river from said St. Michaels to said Dawson City.

Interrog. No. 22. If you answer interrog. No. 21 in the affirmative, state the name of said boat.

Interrog. No. 23. State whether or not on or about the 3d day of August, 1897, you sold Charles B. Lambert, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon
42 either of said steamers between said points.

Interrog. No. 24. If you answer interrog. No. 23 in the affirmative, state upon which of said steamers said ticket entitled the said Lambert to said transportation, and state what serial number,

if any, you assigned to said ticket, and what sum of money said Lambert paid you for said ticket, and whether said ticket entitled the said Lambert to the transportation of any luggage and, if so, how much.

Interrog. No. 25. State whether or not you received said Lambert upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 26. State whether or not you took up and received said ticket back from said Lambert while on said voyage; and, if you state you did, attach to your answer to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 27. State whether you received any luggage of said Lambert upon said vessel; and, if so, state how much was so received.

Interrog. No. 28. State whether you carried said Lambert from said Seattle to said Dawson City.

Interrog. No. 29. State whether you carried said Lambert's luggage or any thereof from said Seattle to said Dawson City.

Interrog. No. 30. State whether or not on or about the 3d day of August, 1897, you sold Lewis F. Overstreet, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points.

Interrog. No. 31. If you answer interrog. No. 30 in the affirmative, state upon which of said steamers said ticket entitled the said Overstreet to said transportation, and state what serial number, if any, you assigned to said ticket, and what sum of money said Overstreet paid you for said ticket, and whether said ticket en-
43 titled the said Overstreet to the transportation of any luggage and, if so, how much.

Interrog. No. 32. State whether or not you received said Overstreet upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 33. State whether or not you took up and received said ticket back from said Overstreet while on said voyage; and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 34. State whether you received any luggage of said Overstreet upon said vessel; and, if so, state how much was so received.

Interrog. No. 35. State whether you carried said Overstreet from said Seattle to said Dawson City.

Interrog. No. 36. State whether you carried said Overstreet's luggage or any thereof from said Seattle to said Dawson City.

Interrog. No. 37. State whether or not on or about the 3d day of August, 1897, you sold William F. Fitzgerald, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points.

Interrog. No. 38. If you answer interrog. No. 37 in the affirmative, state upon which of said steamers said ticket entitled the said Fitzgerald to said transportation, and state what serial number, if any, you assigned to said ticket, and what sum of money said Fitzgerald

paid you for said ticket, and whether said ticket entitled said Fitzgerald to the transportation of any luggage; and, if so, how much.

Interrog. No. 39. State whether or not you received said Fitzgerald upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 40. State whether or not you took up and received said ticket back from said Fitzgerald while on said voyage;
44 and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 41. State whether you received any luggage of said Fitzgerald upon said vessel; and, if so, state how much was so received.

Interrog. No. 42. State whether you carried said Fitzgerald from said Seattle to said Dawson City.

Interrog. No. 43. State whether you carried said Fitzgerald's luggage from said Seattle to said Dawson City.

Interrog. No. 44. State whether or not on or about the 3d day of August, 1897, you sold J. P. Rankin, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points.

Interrog. No. 45. If you answer interrog. No. 44 in the affirmative, state upon which of said steamers said ticket entitled the said Rankin to said transportation, and state what serial number, if any, you assigned to said ticket, and what sum of money said Rankin paid you for said ticket, and whether the said ticket entitled the said Rankin to the transportation of any luggage; and, if so, how much.

Interrog, No. 46. State whether or not you received said Rankin upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 47. State whether or not you took up and received said ticket back from said Rankin while on said voyage; and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 48. State whether you received any luggage of said Rankin upon said vessel; and, if so, state how much was so received.

Interrog. No. 49. State whether you carried said Rankin from said Seattle to said Dawson City.

45 Interrog. No. 50. State whether you carried said Rankin's luggage or any thereof from said Seattle to said Dawson City.

Interrog. No. 51. State whether or not on or about the 3d day of August, 1897, you sold Samuel Funkenstein, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points.

Interrog. No. 52. If you answer interrog. No. 51 in the affirmative, state upon which of said steamers said ticket entitled the said Funkenstein to said transportation, and state what serial number, if any, you assigned to said ticket, and what sum of money said Funkenstein paid you for said ticket, and whether said ticket

entitled the said Funkenstein to the transportation of any luggage; and, if so, how much.

Interrog. No. 53. State whether or not you received said Funkenstein upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 54. State whether or not you took up and received said ticket back from said Funkenstein while on said voyage, and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 55. State whether you received any luggage of said Funkenstein upon said vessel; and, if so, state how much was so received.

Interrog. No. 56. State whether you carried said Funkenstein from said Seattle to Dawson City.

Interrog. No. 57. State whether you carried said Funkenstein's luggage or any thereof from said Seattle to said Dawson City.

Interrog. No. 58. State whether or not on or about the 3d day of August, 1897, you sold Elijah Griffith, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points.

46 Interrog. No. 59. If you answer interrog. No. 58 in the affirmative, state upon which of said steamers said ticket entitled the said Griffith to said transportation, and state what serial number, if any, you assigned to said ticket and what sum of money said Griffith paid you for said ticket, and whether said ticket entitled the said Griffith to the transportation of any luggage; and, if so, how much.

Interrog. No. 60. State whether or not you received said Griffith upon either of said vessels—and if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 61. State whether or not you took up and received said ticket back from said Griffith while on said voyage, and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 62. State whether you received any luggage of said Griffith upon said vessel; and, if so, state how much was so received.

Interrog. No. 63. State whether you carried said Griffith from said Seattle to said Dawson City.

Interrog. No. 64. State whether you carried said Griffith's luggage from said Seattle to said Dawson City.

Interrog. No. 65. State whether or not on or about the 3d day of August, 1897, you sold W. G. Thompson, mentioned in plaintiff's complaint, a ticket entitling him to transportation upon either of said steamers between said points

Interrog. No. 66. If you answer interrog. No. 65 in the affirmative, state upon which of said steamers said ticket entitled the said Thompson to said transportation, and state what serial number, if any, you assigned to said ticket, and what sum of money said Thompson paid you for said ticket, and whether said ticket

47 entitled the said Thompson to the transportation of any luggage; and, if so, how much.

Interrog. No. 67. State whether or not you received said Thompson upon either of said vessels—and, if so, upon which vessel—to be transported from said Seattle to said Dawson City.

Interrog. No. 68. State whether or not you took up and received said ticket back from said Thompson while on said voyage, and, if you state you did, attach to your answers to these interrogatories a full, true, and complete copy of said original ticket.

Interrog. No. 69. State whether you received any luggage of said Thompson upon said vessel; and, if so, state how much was so received.

Interrog. No. 70. State whether you carried said Thompson from said Seattle to said Dawson City.

Interrog. No. 71. State whether you carried said Thompson's luggage from said Seattle to said Dawson City.

Interrog. No. 72. State your true, full corporate name.

Interrog. No. 73. State whether George R. Fisher was at any time the agent of the defendant at the city of Seattle.

Interrog. No. 74. If you state that George R. Fisher was your agent, state during what times he was such agent, and whether he had authority to sell tickets providing for the transportation of passengers upon your steamers during said time.

ARTHUR & WHEELER,
Attorneys for Plaintiff.

Filed Dec. 7, 1897.
GEO. M. HOLLOWAY, *Clerk.*

48 No. 24762. Superior court of Washington county of King. Donald Morrison, plaintiff, *vs.* The North American Transportation and Trading Company, a corporation of the State of Illinois, defendant. Arthur & Wheeler, attorneys for plaintiff. To the clerk of said court: Note the above-entitled cause on motion docket, civil department, for Saturday, December 11, 1897. Nature motion, petition for removal. Last pleading served ——, 189–. To the plaintiff in the above-entitled action and attorneys above named: Please take notice that the issue of law aforesaid in this action will be brought on for trial in the court and department aforesaid on the date first above mentioned. Bausman, Kelleher & Emory, attorneys for def't. Filed Dec. 7, 1897. Geo. M. Holloway, clerk. T. H. P. Service of admitted Dec. 7, 1897. Upton, Arthur & Wheeler, attorneys for plaintiff.

49 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant. } Petition for Removal.

To the honorable the judges of the superior court of King county, State of Washington:

Your petitioner respectfully shows to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

That the controversy in said suit is between citizens and residents of different States, and that the petitioner, the defendant, The North American Transportation and Trading Company, in the above-entitled suit, was at the time of the commencement of this suit and still is a corporation organized and existing under the laws of and a citizen and resident of the State of Illinois, and that the plaintiff, Donald Morrison, was then and still is a resident and citizen of the State of Minnesota.

And that your petitioner offers herewith a good and sufficient surety for his entering in the circuit court of the United States for the district of Washington on the first day of its next session a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

50 And your petitioner prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept said surety and bond, and to cause the record herein to be removed into said circuit court of the United States for the district of Washington.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By GEO. R. FISHER, *Agent.*

BAUSMAN, KELLEHER & EMORY,
Petitioner's Attorneys, Seattle, Washington.

STATE OF WASHINGTON, } ss.:
County of King, }

George R. Fisher, being first duly sworn, deposes and states: I am agent for the North American Transportation and Trading Company; I have read the foregoing petition for removal, am acquainted with the facts therein stated, and believe the same to be true.

GEO. R. FISHER.

Sworn to before me this 3rd day of December, 1897.

DANIEL KELLEHER,
Notary Public.

Due service of within petition this 7th day of Dec., 1897, duly admitted.

UPTON, ARTHUR & WHEELER,
Att'ys for Plaintiff.

Petition and bond aforesaid presented to me, a judge of the superior court of King county, State of Washington, this 7th day of December, 1897. Action thereon postponed until notice to the other side.

E. D. BENSON, *Judge.*

Filed Dec. 7, 1897.
GEO. M. HOLLOWAY, *Clerk.*

51 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant. } Bond on Removal.

Know all men by these presents that the North American Transportation and Trading Company of Chicago, Illinois, as principal, and James Goldsmith, as surety, are holden and stand firmly bound unto Donald Morrison, plaintiff in the above entitled cause, in the penal sum of one thousand dollars; for the payment whereof, well and truly to be made, unto the said Donald Morrison, his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Upon condition, nevertheless, that whereas the said The North American Transportation and Trading Company has petitioned the superior court of King county, State of Washington, for the removal of a certain cause therein pending, wherein the said Donald Morrison is plaintiff and the said The North American Transportation and Trading Company is defendant, to the circuit court of the United States in and for the district of Washington:

Now, if the said The North American Transportation and Trading Company shall enter in the said circuit court of the United States for the district of Washington, on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of
52 the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof the said The North American Transportation

and Trading Company and James Goldsmith have hereunto set their hands and seals this 3rd day of December, 1897.

NORTH AMERICAN TRANSPORTATION & TRADING CO.,
By GEO. R. FISHER, *Agent.*
JAMES GOLDSMITH. [SEAL.]

STATE OF WASHINGTON, } ss:
County of King, }

James Goldsmith, being duly sworn, deposes and says: I am a resident of the State of Washington and county of King, and am a freeholder in said State and county; I am not a sheriff, attorney, or counsellor, or other officer of any court in the State of Washington or at all, and I am worth the sum of two thousand dollars in property within the State over and above all property exempt from sale on execution.

JAMES GOLDSMITH.

Sworn to before me this 3rd day of December, 1897.

ELKEN MORGENSTERN,
Notary Public in and for the State of Washington,
[SEAL.] *Residing at Seattle.*

Due service of within bond this 7 day of Dec., 1897, duly admitted.

UPTON, ARTHUR & WHEELER,
Attorneys for Plaintiff.

Filed Dec. 7, 1897.
GEO. M. HOLLOWAY, *Clerk.*

53 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant. } No. —. Affidavit.

STATE OF WASHINGTON, } ss:
County of King, }

Elwood Harshmand, being first duly sworn, on oath says: I was at all the times hereinafter mentioned and still am a citizen of the United States and a resident of the State of Washington, over the age of twenty-one years. I served the summons and complaint in this action upon the above-named defendant, The North American Transportation and Trading Company, on the 17th day of November, 1897, by delivering to and leaving a copy thereof with George R. Fisher personally, in King county, Washington, the said George R. Fisher being then and there the managing agent and agent of

the defendant, resident in the city of Seattle, county and State aforesaid.

ELWOOD HARSHMAN.

Subscribed and sworn to before me this 9th day of December, 1897.

E. HEISTER GUIE,
Notary Public.

Filed Dec. 9, 1897.
GEO. M. HOLLOWAY, *Clerk.*

54 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
v.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant. } Motion for Default.

Comes now the plaintiff in this action, by his attorneys, the undersigned, and moves the court for an order declaring and adjudging the defendant in this action to be in default and granting the prayer of plaintiff's complaint, for the reason and upon the grounds that the defendant was duly and regularly served with the summons and complaint in this action by personal service thereof in King county, Washington, on the 17th day of November, 1897, and the defendant has wholly failed to move, demur, answer, or otherwise plead in this action, and more than the time allowed by law therefor has expired, and the defendant is wholly in default in this action.

This motion is based upon the pleadings, records, and files in this action.

ARTHUR & WHEELER,
Attorneys for Plaintiff.

Filed Dec. 9, 1897.
GEO. M. HOLLOWAY, *Clerk.*

55 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING Company, a Corporation of the State of Illinois, Defendant. } No. —.

Objection to Granting Order of Removal in the Above-entitled Cause.

1. That the petition in said cause for removal does not show a controversy between the parties.
2. Said petition is not verified positively.

3. Said petition is defective and insufficient.

4. That the said circuit court of the United States has no jurisdiction of the parties or the cause of action herein.

5. That said petition was not presented to the above-entitled court or any judge thereof until more than twenty days, the time allowed by law for appearance by the defendant, had expired and the time for presenting said petition had expired.

6. That the defendants are in default in this action and said default has been claimed by the plaintiff.

UPTON, ARTHUR & WHEELER,
Attorneys for Plaintiff.

Filed Dec. 11, 1897.
GEO. M. HOLLOWAY, *Clerk.*

56 In the Superior Court of the State of Washington for King County.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, a Corporation of the State of Illinois, Defendant. } Order.

Now, on this 11th day of December, 1897, came on to be heard the petition of defendant for an order removing this cause to the United States circuit court for the district of Washington on the petition and bond for removal filed by the defendant on the 7th day of December, 1897, and said petition having been considered and the bond approved, it is hereby—

Ordered that the above-entitled action be, and it hereby is, removed to the United States circuit court for the district of Washington, and all further proceedings in this court are hereby suspended and the clerk of this court is hereby ordered, on payment of fees, to deliver unto defendant a transcript of all the papers, records, and journal entries in this cause. Plaintiff excepts and exception is allowed.

O. JACOBS, *Judge.*

Filed Dec. 11, 1897.
GEO. M. HOLLOWAY, *Clerk.*

57 In the Superior Court of the State of Washington for the County of King.

SATURDAY, *December* 11*th*, 1897.

Hon. E. D. Benson, judge.

DONALD MORRISON
vs.
NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY.

Now, on this day, this cause is transferred to the criminal department.

58 In the Superior Court of King County, State of Washington.

SATURDAY, *December* 11*th*, 1897.

Hon. O. Jacobs, judge.

DONALD MORRISON
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING CO.

This cause came on for hearing upon defendant's petition for removal to United States circuit court. Petition granted. Plaintiff excepts. Order of removal signed.

O. JACOBS, *Judge.*

59 STATE OF WASHINGTON, } ss:
County of King, }

I, Geo. M. Holloway, county clerk of King county and *ex officio* clerk of the superior court of the State of Washington for the county of King, do hereby certify that the foregoing is a true and correct transcript of the entire record in cause #24762, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 22nd day of December, A. D. 1897.

GEO. M. HOLLOWAY, *Clerk,*
[SEAL.] By JOHN WALLACE,
Deputy Clerk.

Indorsed: Transcript. Filed Dec. 23, 1897, in the U. S. circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

60 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING Company, a Corporation of the State of Illinois, Defendant. } Demurrer.

Defendant demurs to the first cause of action in the complaint herein on the grounds:

1. That several causes of action have been improperly united.
2. That it does not state facts sufficient to constitute a cause of action.

Defendant demurs to each of the subsequent causes of action on the ground that it appears in each of said causes of action—

1. That plaintiff has no legal capacity to sue.
2. That there is a defect of parties plaintiff.
3. That several causes of action have been improperly united.
4. That it does not state facts sufficient to constitute a cause of action.

5. That this court has no jurisdiction to hear and determine it.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Defendant.

Due service of within demurrer this 26th day of January, 1898, duly admitted.

UPTON, ARTHUR & WHEELER,
Attorneys for Plaintiff.

Indorsed: Demurrer. Filed January 27, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

61 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant.

No. 653.
Order on Demurrer.

Now, on this 7th day of February, 1898, the demurrer of defendant to each of the causes of action in the complaint is hereby overruled and exceptions allowed to defendant, with leave to the defendant to file an answer in fifteen days from this date.

C. H. HANFORD, *Judge.*

Indorsed: Order on demurrer. Filed Feb'y 7, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

62 In the Circuit Court of the United States, District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND TRADING COMPANY, a Corporation of the State of Illinois, Defendant.

Upton, Arthur & Wheeler, for plaintiff.
Fred Bausman, for defendant.

The complaint alleges a cause of action for damages for the breaking of a contract made and entered into by and between the plaintiff and the defendant; also seven other causes of action for damages for the breaking of seven other contracts made and entered into by and between the defendant and other persons, and alleges the assignment of the seven causes of action to the plaintiff. The defendant, after having removed the case to this court from the State court in which it was commenced, questions the right of the plaintiff to prosecute the case in this court as to the seven assigned causes of action on two grounds, viz., they are not assignable, and this court has no jurisdiction to take cognizance thereof for the

reason that it does not appear that there would have been any ground for Federal jurisdiction if no assignment had been made.

As to the first cause of action, there is a controversy between citizens of different States, and on that ground this court has jurisdiction and the case is removable. It is not the intention of the law to work an injustice to a plaintiff by authorizing a defendant to remove a cause into the United States circuit court, and by that proceeding deprive the plaintiff of the right, which the law gives him, of joining in one action several causes of action. The right
63 of removal is for the purpose of having an adjudication upon the merits, and is not given for the mere purpose of defeating a right of action without a trial on the merits.

The code of this State authorizes an assignee to sue in his own name upon any judgment, specialty, book account, or other chose in action for the payment of money, when the assignment has been made in writing by a person authorized to make the same. A chose in action is a right of proceeding in a court of law to procure the payment of a sum of money or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract. 1 Rapalje and Lawrence Dict., 206–'7. Each of the causes of action in this complaint subsequent to the first is, according to the legal definition of the phrase, a chose in action for the payment of money and may be assigned and a suit thereon maintained in the name of the assignee by virtue of the laws of this State.

C. H. HANFORD, *Judge.*

Indorsed: Opinion. Filed Feb'y 7, 1898. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

64 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON *vs.* NORTH AMERICAN TRANSPORTATION & TRADING COMPANY.	No. 653.

We, the jury in the above-entitled action, do find for the plaintiff, and assess his damages at the sum of.... $2,090.00
Loss of Morrison's baggage..... ..... 29.50

Total $2,119.50

L. A. TREEN, *Foreman.*

Indorsed: Verdict. Filed Dec. 16, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by R. M. Hopkins, deputy.

65 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant.

Motion to Dismiss and Motion to Remand.

Defendant respectfully moves the court to dismiss this cause for the reason that this court has not and never has had jurisdiction to hear and determine the same or any part thereof, for the following reasons:

1. As to the first cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included.

2. As to the second cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

3. As to the third cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

66 4. As to the fourth cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

5. As to the fifth cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

6. As to the sixth cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

7. As to the seventh cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

67 8. As to the eighth cause of action, because the sum or value in dispute is less than two thousand dollars, even if interest and costs be included, and because, also, it does not appear that the proper diversity of citizenship existed at the time of the commencement of this action or at the time of its removal between the assignor of plaintiff and this defendant, so as to confer jurisdiction on this Federal court.

And defendant moves that the whole cause be dismissed for the foregoing reasons, and that each cause of action be dismissed for the reasons respectively as to that cause assigned.

And on the foregoing grounds defendant moves also that if the court shall not dismiss this cause for the foregoing reasons it remand it to the State court and every part of it to the State court on the grounds above given.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Defendant.

Receipt of copy of within motion to dismiss and motion to remand this 17th day of Dec., 1898, admitted.

UPTON, ARTHUR & WHEELER,
Attorneys for Pl'ff.

Indorsed: Motion to dismiss and motion to remand. Filed Dec. 17, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by A. N. Moore, deputy.

68 DECEMBER 26, 1898.

Circuit Court General Order Book, volume 5, page 585.

DONALD MORRISON
v.
NORTH AMERICAN T. & T. Co. } 653.

Now, on this 27th day of Dec., 1898, this cause coming on to be heard upon defendant's motion to dismiss and to remand to the State court, the court, after hearing argument of respective counsel and being sufficiently advised in the premises, denies said motion; to which ruling of the court in denying said motion defendant excepts, and its exception is allowed.

69 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant. } No. 653. Judgment.

This cause came regularly on for trial on the 14th day of Dec., 1898, the plaintiff appearing in person and by his attorneys of record, and the defendant appearing by its attorneys of record, and a jury having been duly empaneled, the evidence on behalf of the respective parties was duly submitted to the court and jury, and thereupon a verdict was duly returned by said jury in favor of the plaintiff and against the defendant for the sum of two thousand one hundred nineteen and fifty-hundredths ($2,119.50) dollars, and the motion of the defendant for a new trial herein having been overruled and the court being duly advised in the premises:

Now, therefore, by reason of the law and the premises, it is considered, ordered, and adjudged that the plaintiff, Donald Morrison, do have and recover of and from the defendant, The North American Transportation and Trading Company, a corporation of the State of Illinois, the sum of two thousand one hundred nineteen and fifty-hundredths ($2,119.50) dollars, with interest thereon, at the legal rate, from the date hereof until paid, together with his costs and disbursements incurred in this action, amounting to —,

70 and that execution issue therefor.

Done in open court this 29th day of Dec., 1898.

C. H. HANFORD, *Judge.*

Def't excepts. Exception allowed.
C. H. H.

Indorsed: Judgment. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

71 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant. } No. 653. Cost Bill.

Comes now the plaintiff in the above-entitled cause and files this his cost bill in said cause:

Clerk's fee in the superior court of Washington, King county, for filing	4.00
Clerk's fee for making transcript for removal to this court	7.90
Clerk's fee of this court	
Affidavits, 6 at $.25	1.50

Deposition of Elijah Griffith:

Attendance of witness, 2 days, and mileage, 2 miles..	3.10	
Notary's charges...	14.50	
Attorney's fee.....	2.50	
		20.10

Deposition of W. S. Levens:

Attendance of witness, 1 day, 2 miles	1.60	
Notary's charges.....	8.25	
Attorney's fee.....	2.50	
		12.35

Deposition- of Alfred Smiley, C. P. Sanders, and J. P. Rankin:

Attendance of witness, 2 days, 2 miles.....	3.10	
Attorney's fee	2.50	
Attendance of witness C. P. Sanders, 3 days, 2 miles.	4.60	
Attorney's fee...	2.50	
Attendance of witness J. P. Rankin, 3 days, 2 miles..	4.60	
Attorney's fee	2.50	
Notary's charges...	30.50	
		50.30

72 Deposition of J. O. Hestwood:

Attendance of witness, 1 day, 2 miles ..	1.60	
Attorney's fee ...	2.50	
Notary's charges.....	10.50	
		14.60

Deposition of Samuel Funkenstein:

Attendance of witness, 1 day, 2 miles	1.60	
Notary's charges.....	11.75	
Attorney's fee.....	2.50	
		15.85

Witness fees for trial of June 9th, 1898:

Witness fees, H. A. Shepard, 1 day, 2 miles	1.60	
" " John Price, 1 day, 2 miles	1.60	
" " S. D. Saunders, 1 day, 2 miles.	1.60	
" " C. B. Lambert, 2 days, 2 miles.....	3.10	
" " J. P. Rankin, 2 days, 2 mi.....	3.10	
" " L. F. Overstreet, 2 days, 2 mi....	3.10	
" " T. R. Mulligan, 2 days, 2 mi.	3.10	
		17.20
Jury meals, ½ cost	....	1.75
Attorney's fee for trial, June 9th, 1898	....	20.00

Supplemental deposition of Wm. F. Fitzgerald:

Attendance of witness, 1 day, 2 miles.....	1.60	
Notary's charges.....	5.50	
Attorney's fee.....	2.50	
		9.60

Supplemental deposition of W. G. Thompson:

Attendance of witness, 1 day, 2 miles	1.60	
Notary's charges	5.50	
Attorney's fee	2.50	
		9.60

Supplemental deposition of Samuel Funkenstein:

Attendance of witness, 1 day, 2 miles	1.60	
Notary's charges	5.75	
Attorney's fee	2.50	
		9.85

Supplemental deposition of Elijah Griffith:

Attendance of witness, 1 day, 2 miles	1.60	
Notary's charges	10.75	
Attorney's fee	2.50	
		14.85

Witness fees for trial of December 14th, 1898:

Witness fee of J. D. Coppersmith, 1 da., 2 mi.	1.60	
" " of Geo. Randsburg, 1 da., 2 mi.	1.60	
" " of R. Osborne, 2 da., 2 mi.	3.10	
" " of J. P. Rankin, 2 da., 2 mi.	3.10	
" " of Theodore Habernal, 2 da., 2 mi.	3.10	
" " of E. M. Pound, 1 day, 2 miles	1.60	
		14.10
Attorney's fee for jury trial		20.00

73 STATE OF WASHINGTON, } ss:
County of King, }

Donald Morrison, being first duly sworn, on oath says that he is the plaintiff in the above-entitled cause; that he has read the foregoing cost bill; that the same is correct, and that the disbursements therein referred to have been actually made and incurred except attorney's fees.

DONALD MORRISON.

Subscribed and sworn to before me this 19th day of December, A. D. 1898.

N. S. PETERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Indorsed: Cost bill. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

74 In the Circuit Court of the United States for the District of Washington.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant.

Petition for Writ of Error.

The above-named, the defendant, The North American Transportation and Trading Company, feeling itself aggrieved by the judgment entered in this cause on the 29th day of December, 1898, prays the allowance of a writ of error to the Supreme Court of the United States and elects to stand on the question of the jurisdiction of this court for the purposes of appeal, and prays that the clerk of this court may within the time prescribed by law send a true copy of the record, judgment, exceptions, assignment of errors, and all proceedings whatsoever in this cause to the clerk of the Supreme Court of the United States.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Defendant.

On this 29th day of December, 1898, it is ordered that a writ of error be allowed in this cause as prayed hereinabove, and that the question of jurisdiction be certified to the Supreme Court.

C. H. HANFORD,
United States District Judge, Presiding in the Circuit Court.

Indorsed: Petition for writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

75 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error,
vs.
DONALD MORRISON, Defendant in Error.

Bond on Appeal and Supersedeas.

Know all men by these presents that we, North American Transportation and Trading Company, as principal, and J. S. Goldsmith and F. M. Graham, as sureties, are held and firmly bound unto the above-named Donald Morrison in the sum of five thousand dollars ($5,000.00), to be paid to the said Donald Morrison; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the foregoing bond is as follows: Whereas the above-named Donald Morrison did, on the 29th day of December, 1898, recover judgment against the above-named North American Transportation and Trading Company in the sum of $2,119.50; and

Whereas the North American Transportation and Trading Company has sued out a writ of error to the Supreme Court of the United States to reverse that judgment:

Now, therefore, the condition of this obligation is this: If the above-named North American Transportation and Trading Company shall prosecute its appeal to effect and answer all damages and costs, if it fail to make its appeal good, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 29th day of December, 1898.

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,
By F. P. SEARLE, *Agent.*
J. S. GOLDSMITH. [SEAL.]
F. M. GRAHAM. [SEAL.]

76 STATE OF WASHINGTON, } ss:
County of King, }

J. S. Goldsmith and F. M. Graham, being each first duly sworn, each for himself deposes and says: I am one of the sureties above named; I am a resident of the State of Washington and county of King, and am a freeholder in said State and county; I am not a sheriff, attorney, or counsellor or other officer of any court in the State of Washington or at all. and I am worth the sum of five thousand dollars in property within this State over and above all property exempt from sale on execution.

[Revenue stamps 10c. affixed and canceled.]

J. S. GOLDSMITH.
F. M. GRAHAM.

Subscribed and sworn to before me this 29th day of December, 1898.

[NOTARIAL SEAL.]

ELKAN MORGENSTERN,
Notary Public in and for the State of Washington, Residing at Seattle.

The foregoing bond is approved this 29th day of December, 1898.

C. H. HANFORD, *Judge.*

Indorsed: Bond on appeal and supersedeas. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

77 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error, *vs.* DONALD MORRISON, Defendant in Error. } No. —. Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable C. H. Hanford, one of you, between Donald Morrison, plaintiff and defendant in error, and The North American Transportation and Trading Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court
78 may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By H. M. WALTHEW,
Deputy Clerk.

[Seal U. S. Circuit Ct.]

The above writ of error allowed this 29th day of December, 1898.

[Seal U. S. Circuit Ct.]

C. H. HANFORD, *Judge.*

Indorsed: Writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

79 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error,
vs.
DONALD MORRISON, Defendant in Error.

No. —. Writ of Error. Copy for Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable C. H. Hanford, one of you, between Donald Morrison, plaintiff and defendant in error, and The North American Transportation and Trading Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
80 of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By H. M. WALTHEW,
Deputy Clerk.

[Seal U. S. Circuit Ct.]

The above writ of error allowed this 29 day of December, 1898.

C. H. HANFORD, *Judge.*

[Seal U. S. Circuit Ct.]

Indorsed: Writ of error. Copy for defendant in error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

81 In the Supreme Court of the United States.

North American Transportation and Trading Company, Plaintiff in Error, *vs.* Donald Morrison, Defendant in Error.	No. — Assignment of Errors.

The above-named plaintiff in error, North American Transportation and Trading Company, files this its assignment of errors and says that in the record and proceedings of the above-entitled cause there is manifest error in this, to wit, that in the trial of this cause in the circuit court of the United States for the district of Washington said circuit court of the United States committed error as follows:

First. In denying the motion of defendant to dismiss each of the causes of action in the complaint, because the same and each of them did not, as to the value of the matter in dispute, involve a controversy substantially within the jurisdiction of the United States circuit court.

Second. In denying the defendant's motion to dismiss each of the seven assigned causes of action, because each of said assigned causes of action did not, as to the value of the matter in dispute, involve a controversy substantially within the jurisdiction of the United States circuit court, and because the citizenship of the assignors of plaintiff was nowhere alleged and the circuit court of the United States could not take jurisdiction of assigned causes of action without such allegations.

Third. In refusing to dismiss the whole cause, because it did not as a whole involve as to the value of the matter in dispute a controversy substantially within the jurisdiction of the United
82 States circuit court, and because *their* being united with the first cause the seven assigned causes of action in which the proper diversity of citizenship did not appear, the whole of the cause was beyond the jurisdiction of the United States circuit court.

Fourth. In denying the defendant's motion to remand this cause to the State court for the reason that at the time of the removal thereof it was not, either as to the value of the matter in dispute or as to the citizenship of the parties, within the jurisdiction of the United States circuit court.

Wherefore the said North American Transportation and Trading Company prays that the judgment of the circuit court of the United States for the district of Washington be reversed.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Plaintiff in Error.

Indorsed: Assignment of errors. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

83 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error, *vs.* DONALD MORRISON, Defendant in Error. } No. —. Citation on Writ of Error.

The United States of America to Donald Morrison, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within sixty days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein North American Transportation and Trading Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 29 day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

C. H. HANFORD,
District Judge, Presiding in Circuit Court.

[Seal U. S. Circuit Ct.]

84 Due service of within citation on writ of error this 29 day of December, 1898, duly admitted.

UPTON, ARTHUR & WHEELER,
Attorneys for Defendant in Error.

Indorsed: Citation on writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

85 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff, *vs.* THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant. } No. 653. Certified Question on Writ of Error.

I, C. H. Hanford, district judge, presiding in the circuit court aforesaid, and the judge before whom the above-entitled cause was tried, do now, on the 29 day of December, 1898, being the December term, at which the judgment and verdict were entered herein, certify as follows:

Morrison, the plaintiff, alleging himself to be a citizen and resident of the State of Minnesota, began this action in the superior

court of King county, State of Washington, against the defendant, alleging it to be a corporation organized and existing under the laws of the State of Illinois and engaged in business in the State of Washington. The suit was upon eight causes of action, the first on plaintiff's own account, the other on account of seven alleged assignors of plaintiff. The citizenship of these assignors was nowhere alleged.

Defendant removed the case to this court on the ground of diversity of citizenship between it and plaintiff Morrison and the involving of a sum exceeding two thousand dollars, exclusive of interest and costs. After removal defendant demurred to each cause of action in the complaint as not sufficient to constitute a cause of action, and as to the last seven causes of action on the additional ground that the court had no jurisdiction to hear it, and this was over-
86 ruled, with exception to defendant. Issue was then joined, and, after two trials, judgment was entered as now complained of in error in the sum of $2,119.50. After the verdict and before judgment defendant moved to dismiss or remand the whole cause and each cause of action on the ground that as to the first cause of action it did not involve two thousand dollars, exclusive of interest and costs, and as to the second and each subsequent cause of action—that is to say, as to the assigned causes of action—that each of these did not involve two thousand dollars, exclusive of interest and costs, and because, also, it did not appear that proper diversity of citizenship existed at the time of the commencement of the action or at the time of its removal between the assignors of plaintiff and defendant so as to confer jurisdiction upon the Federal court; which said motion to dismiss and remand was denied, with exception to defendant.

The original complaint shows that the aggregate sum sued for by Morrison was $18,173.50, divided, as already stated, into eight causes of action. The suit was upon eight contracts of carriage between defendant as a carrier and plaintiff and his seven assignors from Seattle to Dawson City, by way of St. Michaels and the Yukon river, which contracts were alleged to have been broken by the carrier by failure and refusal to transport the passengers farther than Fort Yukon on the river.

The first cause of action—that of plaintiff himself—alleged himself to be a citizen and resident of Minnesota and defendant a corporation organized and existing under the laws of the State of Illinois. The contract was alleged to have been made at Seattle on the 30th day of July, 1897, and the agreed date of the delivery of the plaintiff at Dawson by the carrier was alleged to be September 15th, 1897, and this suit was brought on the 17th day of
87 November, 1897. On the breach of the contract at Fort Yukon plaintiff alleged himself compelled to return to Seattle. The damages claimed by him were as follows: (*a*) The price of his ticket from Seattle to Dawson City, $200.00; (*b*) $72.50, returning to Seattle after the breach of contract at Fort Yukon; (*c*) expense of one dollar a day and loss of time at three dollars a day at Seattle since his return there, the 18th day of October, 1897;

(*d*) three dollars a day from the 30th day of July, 1897, which he could have earned if he had not started on the journey at all; (*e*) fifteen dollars a day which he could have earned for a year at Dawson after the 15th day of September, 1897; (*f*) lost baggage, $29.50; the total prayer of this cause of action being $2,301.75.

The second and subsequent causes of action, being the assigned causes, arose on exactly similar contracts of carriage. The citizenship of the respective assignors was not averred. The damages claimed were exactly the same as those claimed by plaintiff himself, excepting that none of the assignors claimed the item of lost baggage, and that the item of cost in returning from Fort Yukon to Seattle was as low as $61.50 in some instances and as high as $103.25 in others. The lowest sum claimed by any of the assignors as his total damage was $2,261.25, and the highest claimed was $2,303.25.

Neither in the original nor the assigned causes of action was it alleged that any of these passengers had ever lived in Dawson before, had any previous engagement or business there or any promise of employment, the allegation in each cause of action as to the passenger's damage in this respect being that "he could have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby secured wages and profits at the rate of fifteen dollars per day continuously from said September 15th, 1897, for the period of the year thence next ensuing," and that "he has wholly
88 lost all of said employment and time and all of said wages and profits, to his damage in the sum of $2,000.00." It was not alleged what, if any, occupation either plaintiff or any of his assignors had before departure on the journey, nor was it alleged what occupation was expected at the point of destination, or that any expected occupation was communicated to the defendant.

Now, therefore, I do certify to the Supreme Court the following question of jurisdiction as follows:

Whether the motions to dimiss and to remand should have been granted because at the time of removal to this court the cause was one of which this court could not take jurisdiction—that is to say, whether—

(*a*.) In each of the causes of action the sum or value of the matter actually in dispute, as shown in the pleadings, was less than two thousand dollars, exclusive of interest and costs, and a controversy was involved substantially within the jurisdiction of this court; and whether—

(*b*.) If the foregoing be answered in the affirmative, the amounts claimed in the assigned causes of action could be united to that in the first to make up the jurisdictional amount, the citizenship of the assignors not being alleged; and whether—

(*c*.) Supposing the jurisdictional amount was sufficient in each cause of action, the case was even then removable to this court when the necessary diversity of citizenship was alleged only in the first cause of action and was not alleged in those assigned.

C. H. HANFORD, *Judge*.

Indorsed: Certified question on writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

89 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff, *vs.* THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant.	No. 653. Exceptions to Proposed Certificate.

Comes now the plaintiff, by his attorneys, the undersigned, and excepts and objects to the proposed certificate of defendant certifying the question of the jurisdiction of this court to the Supreme Court of the United States in this cause and to the signing of such certificate on the following grounds, to wit:

I.

It does not appear by the record and proceedings in this cause that the jurisdiction of this court is in issue.

II.

It appears by said record, proceedings, and proposed certificate that the jurisdiction of this court is not in issue.

III.

It appears that said proposed certificate and the appeal thereon to the Supreme Court of the United States is manifestly for the purpose of delay only, and is wholly without merit.

UPTON, ARTHUR & WHEELER,
Attorneys for Plaintiff.

90 Receipt of a copy and due service hereof admitted this 29th day of December, 1898.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Defendant.

Indorsed: Exceptions. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

91 In the United States Circuit Court for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff,
vs.
THE NORTH AMERICAN TRANSPORTATION and Trading Company, a Corporation of the State of Illinois, Defendant.

No. 653. Præcipe for Transcript.

To the clerk of the above-entitled court:

You will please prepare at once transcript on writ of error to the Supreme Court of the United States and forward the same to the clerk of that court, including in the transcript the following papers, necessary to the determination of the question certified by this court:

1. A complete copy of the transcript from the State court on removal to this court, including copy of each and every paper of which the State clerk has given you transcript.
2. Demurrer to original complaint.
3. Journal entry of order overruling that demurrer.
4. Verdict on second trial.
5. Judgment.
6. Cost bill.
7. Motion to dismiss and to remand.
8. Journal entry showing overruling of motion to dismiss and to remand.
9. Petition for writ of error.
10. Writ of error.
11. Defendant in error's copy of writ.
12. Supersedeas.
13. Assignment of errors.
14. Citation.
15. Question certified on writ of error.
16. Objections to question certified.
17. Send original writ of error, as well as include copy in transcript.
18. This præcipe.
19. All indorsements, of any kind whatsoever, appearing on any of the above-named papers.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Plaintiff in Error.

Indorsed: Præcipe for transcript. Filed Dec. 30, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy.

92 In the Circuit Court of the United States for the District of Washington, Northern Division.

DONALD MORRISON, Plaintiff and Defendant in Error,
vs.
THE NORTH AMERICAN TRANSPORTATION AND Trading Company, a Corporation of the State of Illinois, Defendant and Plaintiff in Error.

No. 653. Clerk's Certificate.

UNITED STATES OF AMERICA, *District of Washington,* } *ss.*:

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the foregoing ninety-one (91) typewritten pages, numbered from one (1) to ninety-one (91), inclusive, to be full, true, and correct copies of so much of the record and proceedings in the above-entitled cause as I am directed in and by the præcipe for transcript filed in this cause by the attorneys for defendant and plaintiff in error herein (a copy of which præcipe will be found on page 91 of the transcript on appeal herein) to transmit to the Supreme Court of the United States as a transcript on appeal in the above-entitled cause, and that the same constitutes the transcript on appeal in the above-entitled cause from the circuit court of the United States for the district of Washington, northern division, to the Supreme Court of the United States.

I do further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of twenty dollars and seventy-five cents ($20.75), and that the same has been paid to me by Messrs. Bausman, Kelleher & Emory, attorneys for defendant and plaintiff in error above mentioned.

Seal United States Circuit Court, District of Washington, Northern Division.

In witness whereof I have hereunto set my hand — affixed the seal of said circuit court this 28th day of January, A. D. 1899.

A. REEVES AYRES, *Clerk,*
By R. M. HOPKINS, *Deputy Clerk.*

[10-cent U. S. internal-revenue stamp, canceled Jan. 28, 1899. R. M. H.]

93 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error, *vs.* DONALD MORRISON, Defendant in Error. } No. —. Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable C. H. Hanford, one of you, between Donald Morrison, plaintiff and defendant in error, and The North American Transportation and Trading Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within sixty days from the date hereof, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of December, in the year of our
94 Lord one thousand eight hundred and ninety-eight.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By H. M. WALTHEW, *Deputy Clerk.*

The above writ of error allowed this 29th day of December, 1898.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

C. H. HANFORD, *Judge.*

95 [Endorsed:] Orig., No. —. In the Supreme Court of the United States. North American Transportation and Trading Company, plaintiff in error, *vs.* Donald Morrison, defendant

in error. Copy for defendant. Writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy. Bausman, Kelleher & Emory, attorneys for pl'ff in error, rooms 626, 627, and 628 Bailey building, Seattle, Washington.

96 In the Supreme Court of the United States.

NORTH AMERICAN TRANSPORTATION AND Trading Company, Plaintiff in Error, *vs.* DONALD MORRISON, Defendant in Error. } No. —. Citation on Writ of Error.

The United States of America to Donald Morrison, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within sixty days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein North American Transportation and Trading Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this 29 day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

C. H. HANFORD,
District Judge, Presiding in Circuit Court.

97 [Endorsed:] Orig., No. —. In the Supreme Court of the United States. North American Transportation and Trading Company, plaintiff in error, *vs.* Donald Morrison, defendant in error. Citation on writ of error. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayres, clerk, by H. M. Walthew, deputy. Bausman, Kelleher & Emory, attorneys for pl'ff in error, rooms 626, 627, and 628 Bailey building, Seattle, Washington.

Due service of within citation on writ of error this 29 day of December, 1898, duly admitted.

UPTON, ARTHUR & WHEELER,
Attorneys for Defendant in Error.

Endorsed on cover: Case No. 17,288. Washington C. C. U. S. Term No., 203. The North American Transportation and Trading Company, plaintiff in error, *vs.* Donald Morrison. Filed February 6, 1899.

No. 203

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1899

NORTH AMERICAN TRANSPORTATION & TRADING CO.
Plaintiff in Error

vs.

DONALD MORRISON
Defendant in Error

In Error to the Circuit Court of the United States for the District of Washington.

BRIEF OF PLAINTIFF IN ERROR

OF THE MOTION TO DISMISS.

This case comes here direct, under the act of March 3rd, 1891, on error to the Circuit Court on the single question of jurisdiction. The defendant in error has moved to dismiss the writ on the ground that it is frivolous and taken merely for delay. As this motion obviously involves the entire case, we will proceed to consider the certified question.

STATEMENT.

This suit, which is upon a number of steamship tickets, we cannot state more concisely than we have already

done in the certified question itself, and this we will now set forth in full as it was accepted and signed by the trial judge, inserting in it our own references to the pages of the present record.

"I, C.H. Hanford, district judge, presiding in the Circuit Court aforesaid, and the judge before whom the above-entitled cause was tried, do now, on the 29 day of December, 1898, being the December term, at which the judgment and verdict were entered herein, certify as follows:

"Morrison, the plaintiff, alleging himself to be a citizen and resident of the State of Minnesota, began this action in the superior court of King county, State of Washington, against the defendant, alleging it to be a corporation organized and existing under the laws of the State of Illinois and engaged in business in the State of Washington (p. 2). The suit was upon eight causes of action, the first on plaintiff's own account, the other on account of seven alleged assignors of plaintiff. The citizenship of these assignors was nowhere alleged.

"Defendant removed the case to this court on the ground of diversity of citizenship between it and plaintiff Morrison and the involving of a sum exceeding two thousand dollars, exclusive of interest and costs. After removal defendant demurred to each cause of action in the complaint as not sufficient to constitute a cause of action, and as to the last seven causes of action on the additional ground that the court had no jurisdiction to hear it, and this was overruled, with exception to defendant (pp. 37-8). Issue was then joined, and, after two trials, judgment was entered as now complained of in error in the sum of $2,119.50. After the verdict and before judgment defendant moved to dismiss or remand the whole cause and each cause of action on the ground that as to

the first cause of action it did not involve two thousand dollars, exclusive of interest and costs, and as to the second and each subsequent cause of action—that is to say, as to the assigned causes of action—that each of these did not involve two thousand dollars, exclusive of interest and costs, and because, also, it did not appear that proper diversity of citizenship existed at the time of the commencement of the action or at the time of its removal between the assignors of plaintiff and defendant so as to confer jurisdiction upon the Federal Court; which said motion to dismiss and remand was denied, with exception to defendant (pp. 40-41).

"The original complaint shows that the aggregate sum sued for by Morrison was $18,173.20, divided, as already stated, in eight causes of action. The suit was upon eight contracts of carriage between defendant as a carrier and plaintiff and his seven assignors from Seattle to Dawson City, by way of St. Michaels and the Yukon River, which contracts were alleged to have been broken by the carrier by failure and refusal to transport the passengers farther than Fort Yukon on the river.

"The first cause of action—that of plaintiff himself—alleged himself to be a citizen and resident of Minnesota and defendant a corporation organized and existing under the laws of the State of Illinois. The contract was alleged to have been made at Seattle on the 30th day of July, 1897,* and the agreed date of the delivery of the plaintiff at Dawson by the carrier was alleged to be September 15th, 1897 (pp. 3, VI), and this suit was brought on the 17th day of November, 1897 (p. 34). On the breach of the contract at Fort Yukon plaintiff alleged himself compelled to return to Seattle. The damages claimed by him were as follows: (a) The price of his

* A slight error. It was on the 3rd of August (p. 2).

ticket to Dawson City, $200.00; (b) $72.50, returning to Seattle after the breach of contract at Fort Yukon; (c) expense of one dollar a day and loss of time at three dollars a day at Seattle since his return there, the 18th day of October, 1897; (d) three dollars a day from the 30th day of July, 1897, which he could have earned if he had not started on the journey at all; (e) fifteen dollars a day which he could have earned for a year at Dawson after the 15th day of September, 1897; (f) lost baggage, $29.50; the total prayer of this cause of action being $2,301.75.

"The second and subsequent causes of action, being the assigned causes, arose on exactly similar contracts of carriage. The citizenship of the respective assignors was not averred. The damages claimed were exactly the same as those claimed by plaintiff himself, excepting that none of the assignors claimed the item of lost baggage, and that the item of cost in returning from Fort Yukon to Seattle was as low as $61.50 in some instances and as high as $103.25 in others. The lowest sum claimed by any of the assignors as his total damage was $2,261.25, and the highest claimed was $2,303.25.

"Neither in the original nor the assigned causes of action was it alleged that any of these passengers had ever lived in Dawson before, had any previous engagement or business there or any promise of employment, the allegation in each cause of action as to the passenger's damage in this respect being that "he could have found employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby secured wages and profits at the rate of fifteen dollars per day continuously from said September 15th, 1897, for the period of the year thence next ensuing," and that "he has wholly lost all of said employ-

ment and time and all of said wages and profits, to his damage in the sum of $2,000.00." It was not alleged what, if any, occupation either plaintiff or any of his assignors had before departure on the journey, nor was it alleged what occupation was expected at the point of destination, or that any expected occupation was communicated to the defendant.

"Now, therefore, I do certify to the Supreme Court the following question of jurisdiction as follows:

"Whether the motion to dismiss and to remand should have been granted because at the time of removal to this court the cause was one of which this court could not take jurisdiction—that is to say whether—

(a) In each of the causes of action the sum or value of the matter actually in dispute, as shown in the pleadings, was less than two thousand dollars, exclusive of interest and costs, and a controversy was involved substantially within the jurisdiction of this court; and whether—

(b) If the foregoing be answered in the affirmative, the amounts claimed in the assigned causes of action could be united to that in the first to make up the jurisdictional amount the citizenship of the assignors not being alleged; and whether—

(c) Supposing the jurisdictional amount was sufficient in each cause of action, the case was even then removable to this court when the necessary diversity of citizenship was alleged only in the first cause of action and was not alleged in those assigned.

C. H. HANFORD, *Judge.*"

There will be noticed (p. 2, IV) a claim also of a contract between the carrier and the passenger for a sale of merchandise to the latter on his arrival at Dawson, but on this score no damages are claimed and the damages are specifically ap-

propriated to the other items, lost time, travelling expenses, and lost baggage, (p. 4).

SPECIFICATION OF ERRORS.

The lower court erred as follows:

First. In denying the motion of defendant to dismiss each of the causes of action in the complaint, because the same and each of them did not, as to the value of the matter in dispute, involve a controversy substantially within the jurisdiction of the United States circuit court.

Second. In denying the defendant's motion to dismiss each of the seven assigned causes of action, because each of said assigned causes of action did not, as to the value of the matter in dispute, involve a controversy substantially within the jurisdiction of the United States circuit court, and because the citizenship of the assignors of plaintiff was nowhere alleged and the circuit court of the United States could not take jurisdiction of assigned causes of action without such allegations.

Third. In refusing to dismiss the whole cause, because it did not as a whole involve as to the value of the matter in dispute a controversy substantially within the jurisdiction of the United States circuit court and because their being united with the first cause the seven assigned causes of action in which the proper diversity of citizenship did not appear, the whole of the cause was beyond the jurisdiction of the United States circuit court.

Fourth. In denying the defendant's motion to remand this cause to the State court for the reason that at the time of the removal thereof it was not, either as to the value of the matter in dispute or as to the citizenship of the parties, within the jurisdiction of the United States circuit court.

Wherefore the said North American Transportation and Trading Company prays that the judgment of the circuit court of the United States for the district of Washington be reversed.

BAUSMAN, KELLEHER & EMORY,
Attorneys for Plaintiff in Error.

Indorsed: Assignment of errors. Filed Dec. 29, 1898, in the U. S. circuit court. A. Reeves Ayers, clerk, by H. M. Walthew, deputy.

ARGUMENT.

The assignment of errors may be more conveniently discussed under the three heads of the certified question:

I.

"*Whether in each of the causes of action the sum or value of the matter actually in dispute as shown in the pleadings, was less than two thousand dollars, exclusive of interest and costs, and a controversy was involved substantially within the jurisdiction of this court.*"

If the celebrated rule in *Hadley vs. Baxendale* is still the law, we do not see how the passenger here can recover for lost time at Dawson, and, if he cannot recover for that, he has no remaining items of damage sufficient to make up the jurisdictional sum. To this objection each of the eight causes of action is open. Of the six grounds of damage alleged (p. 4), we find that $2000 is appropriated, as stated in the certificate, to the lost wages at Dawson by non-arrival there. If, therefore, what he could have earned at Dawson is too remote and speculative to be recovered, there remains in each cause of action less than the jurisdictional amount. The other items of damage are insufficient. Whether such a claim as lost time and wages at Seattle, the point of departure, can be recovered under any circumstances, need not be considered,

for even if it be computed at its full rate from the date of departure, Aug. 3rd, 1897, to the date of suit, Nov. 17th, 1897, it is not enough either by itself or with the others. The jurisdictional amount, accordingly depends in each of these causes of action on the lost time at Dawson.

This inquiry is indispensible, too, for our jurisdictional objections are against the first cause of action as well as the others, and the first, plaintiff's own, is objected to only as to amount It is the others that are objected to both as to amount and as to assignment. We must, to dispose of the first, take up now the broad question whether, even if a passenger can recover for lost time at all, he can do so under allegations like these, which plainly indicate him to have been merely in search of new fortunes.

In this case no engagement at the point of destination is alleged, no employment there beforehand at all, as in the case of a man returning to his regular place of business and delayed by the carrier, but at most a condition of things that it would be possible for him, if he desired, to get work there, with full liberty, though, to change his mind either as to the kind of work or as to working at all. Now, nothing can be plainer than that, if a passenger may recover for loss of time at a destination where he has no previous engagement, he has an enormous advantage over his carrier in any suit for delay. He can change what was his original intention and not be discovered. Originally intending, perhaps, not to take any certain employment in the place of destination but simply to become a speculator or man of leisure, he may, once he is delayed, become extravagant in his protestations of loss, declare himself outraged, elect to consider himself as having lost some employment at the point of destination, and mulct the carrier, when, in point of fact, he has not been damaged

at all. Where, on the other hand, the passenger has a definite employment at the point of destination, as in the case of one's returning to one's business; or of one's going to fill a contract of employment already arranged, there the thing is more clear and certain.

Morrison's case is simply that of a man who has left home to seek new fields, an adventurer to the gold fields in the historic excitement of 1897. What in the world he would do there probably he himself did not know. At a place like Dawson he might become a gambler, run a restaurant, speculate in mines, keep a lodging house, become a workman in town or a miner in the country. On the day of his arrival he might deem it best to avoid going into any employment, in the hopes of making some profitable speculation. That men act in this way everybody knows. Too often it is only when delayed by a carrier, that they find it profitable to allege some specific employment, the loss of which was a great calamity to them. When delayed by the carrier, they become persons wanting employment as miners where miners' wages are high.

Why say, even if there be a good demand for labor, that this particular man is the sort of person whom employers favor, or that he is the kind of man to get quickly or to keep long any employment that he does obtain? Is he goodnatured or quick tempered, slow or active, drunken or sober, vigorous or weakly? These questions make the whole thing speculative.

Such reasonings as the foregoing have influenced the courts into what seems now to be the settled law that when a passenger is delayed in his journey and ultimately completes it, he cannot recover for any loss of time, though he may re-

cover what are often his heavy expenses in finishing the journey.

1 Fetter, Carriers, section 124.

The cases are well collected in the foregoing; but there are some others. The English case of *Hamlin vs. Great Northern Railway*, cited by Fetter, is followed in

La Blanche vs. London & N. W., L. R., 1 C. P. D. 286, 48 L. J. C. P. 521, 34 L. T. 677, 24 W. R. 808.

The measure of damages adopted in the English and American cases, as cited above, and also referred to by Fetter, seems to be fully borne out by the doctrine announced by this court in a telegraph case:

West Union Tel. Co. vs. Hall, 124 U. S. 444.

and the rule in *Hadley vs. Baxendale*, (itself a suit against a carrier for delay), is adopted in this court in

Howard vs. Stillwell & Bierce Mfg. Co., 139 U. S. 199.

Where the journey is entirely broken up and the travellers return to the point of departure, as here, lost time may possibly be recovered as of the point of departure. Fetter, in laying down the rule forbidding loss of time in journeys completed after delay, seems to allow this exception. If this should be the law, plaintiff's case is hopelessly below the jurisdictional sum, for, conceding that such time could be recovered for, there is not enough of it here to make up the jurisdictional amount. The allegations (p. 4, XII) state such loss from August 3rd, 1897, to the commencement of the action, Nov. 17th, 1897 (p. 34), at three dollars a day. The Supreme Court of the State of Washington apparently adopts this measure of damages in a case arising out of the very case in-

volved here. *Smith vs. North American, etc. Co.*, 20 Wash., 580.

Hadley vs. Baxendale, already referred to, would seem to have stated a much better case against the carrier than this. The complaining party had an established business, the carrier knew it, and the shipment was wanted for a specific purpose of which the carrier was informed.

The rule we are contending for does not entirely abolish recovery for lost time in cases of carrier and passenger. To that extent it is not necessary to go. Such passengers as are returning to their regular business or who have an engagement at their destination may still recover.

II.

"*Whether if the foregoing be answered in the affirmative, the amounts claimed in the assigned causes of action could be united to that in the first to make up the jurisdictional amounts, the citizenship of the assignors not being alleged.*"

We see no objection to joining fractional sums in different causes of action to make up the aggregate amount for jurisdiction, provided each of the component causes of action is itself otherwise a proper one for a federal circuit court. But if such be not the case, that is to say, if the causes lack the proper citizenship in fact or by presumption, they would be improper even if exceeding each the jurisdictional sum. This point need not be further considered, for, if we are right in the next, this will *a fortiori* be held in the negative.

III.

"*Whether, supposing the jurisdictional amount was sufficient in each cause of action, the case was even then removable to this court, when the necessary diversity of citizenship was alleged only in the first cause of action, and was not alleged in those assigned.*

Since the decision in *Mexican Nat'l Ry. vs. Davidson*, 157 U. S. 201, the jurisdictional objection on assigned claims applies under the existing statutes to removed causes, like the present, as well as to original. If, then, this was a case solely of assigned causes of action, it is not to be doubted that the removal was improper because the citizenship and residence of the assignors nowhere appeared, either in the complaint or in the petition for removal. Their citizenship must affirmatively appear. (*Parker vs. Ormsby*, 141 U. S. 81.)

The jurisdiction retained by the lower court, accordingly, can be defended only on the reasoning that, as plaintiff had one cause of action of his own in which the citizenship was sufficient, he could add other causes, though his by assignment, without regard to the citizenship of his assignors. But surely this is not the law. If it be the law, then the statutory inhibition is easily evaded. For such an exception as this we can see no reason. A plaintiff who is chosen to receive assigned claims for suit in a federal court is always selected with proper citizenship of his own and yet cannot maintain the suit if his assignor had not the requisite citizenship too. Now, why should he be able to prosecute the forbidden claim, simply because he has tacked on one of his own? The lower court appeared to think (p. 38) that, as the local law gave plaintiff a right to join as many causes of action in contract as he chose, this right should not be taken away from him. Very well. On the lower court's own reasoning plaintiff's rights would have been retained for him by remanding the whole case on our motion to the state court, where there could be no objection at all to such a joinder. Perhaps the lower court reasoned that to remand the *whole* case, all the causes of action, was more than he could properly do, as one cause of action did have the requisite citizenship. But the

causes of action do not become melted together. Each must stand on its own jurisdictional condition. See the separate treatment of two causes of action in *Ry. Co. vs. Davidson supra.*

But there seems to us no difficulty in retaining the first cause of action and dismissing or remanding the others, or, if the first cause was not properly removed as a separable controversy, then to dismiss or remand the whole. The federal rule as to assigned claims is not to be violated because in the state court the plaintiff would have had greater rights. This may be a good reason for remanding the cause, but not a justification for retaining it.

Only one thing remains to be discussed under this head. It may possibly be suggested that the claims assigned here are not of the sort forbidden by the assignment clause of the federal act. For our own part, though, we have very little doubt that, as these are assigned, suits upon tickets (p—), they are clearly within the inhibition. *Mississippi Mills vs. Cohn*, 150 U. S. 202, *Plant Inv. Co. vs. Ry*, 152, U. S. 71, *Mexican Nat'l. Ry. vs. Davidson*, 157 U. S. 201, and at Circuit see, *Simons vs. Ypsilanti Paper Co.*, 33 Fed. 193, *Wilkinson vs. Wilkinson*, 2 Curtis 582, *Chase vs. Sheldon Mills*, 56 Fed. 625.

Respectfully submitted,

FREDERICK BAUSMAN,

Counsel for Plaintiff in Error.

FILED
JAN 27 1900

In the

Supreme Court of the United States

OCTOBER TERM, 1899

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,

Plaintiff in Error,

vs.

RONZELO MORRISON,

Defendant in Error.

In Error to the Circuit Court of the United States for the District of Washington.

BRIEF OF DEFENDANT IN ERROR.

JOHN ARTHUR AND L. H. WHEELER,

Counsel for Defendant in Error.

Pigott & French Co., Printers, Seattle, Wash.

NO. 203.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY,
Plaintiff in Error,
vs.
DONALD MORRISON,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of Washington.

BRIEF OF DEFENDANT IN ERROR

ARGUMENT.

The question raised in the three points discussed in plaintiff in error's brief is the jurisdiction of the Circuit Court. Defendant in error bases the first cause of action upon plaintiff in error's breach of the agreement, made August 3, 1897, to carry him from Seattle to Dawson City, reaching latter place

by September 15, 1897; to supply him with board throughout said journey, and at Dawson sell to him goods and mining supplies sufficient for one year's use; also to recover the Two Hundred Dollars ($200) passage money paid plaintiff in error; Seventy-Two Dollars and Fifty Cents ($72.50), extra travelling expenses; Twenty-Nine Dollars and Seventy-five Cents ($29.75) for loss of baggage; and Two Thousand Dollars ($2000) damages for the breach. (Complaint, Par. IV, V, VI; Transcript, pp. 2, 3).

The seven succeeding causes of action are based upon the same kind of demands, excepting as to loss of baggage; and the lowest demand in any of them is Two Thousand, Two Hundred and Sixty-one Dollars and Twenty-five Cents ($2261.25).

The suit was begun in the Superior Court of King County, Washington, and was filed November 30, 1897. (Transcript, p. 24). December 7, 1897, plaintiff in error filed its petition for removal to the Circuit Court, alleging that the matter in dispute, exclusive of interests and costs, exceeded the sum of Two Thousand Dollars ($2000), and "that the controversy in said suit is between citizens and residents of different states"; and showing the diversity of citizenship of plaintiff in error and defendant in error. (Transcript, pp. 32, 33).

The cause was removed, pursuant to said petition. January 27, 1898, plaintiff in error filed its demurrer to the jurisdiction of the Circuit Court, and upon the hearing thereof,

February 7, 1898, sought to have the case dismissed or remanded to the Superior Court. (Transcript, p. 38).

The first cause of action is clearly one involving an amount in excess of Two Thousand Dollars ($2000), and the diversity of citizenship is sufficiently alleged. For the purpose of determining the jurisdiction of the Circuit Court, at the time of the consideration of plaintiff in error's motion to remand the cause, the amount claimed by defendant in error in the first cause is taken as confessed. Plaintiff in error, by its sworn petition for removal, alleges that the controversy is one between citizens of different states. Immediately upon the removal, plaintiff in error applied to remand it, notwithstanding its own sworn statement. Upon the hearing of plaintiff in error's motion, the Circuit Court says: "It is not the intention of the law to work an injustice to a plaintiff by authorizing a defendant to remove a cause into the United States Circuit Court, and by that proceeding deprive the plaintiff of the right, which the law gives him, of joining in one action several causes of action. The right of removal is for the purpose of having an adjudication upon the merits, and is not given for the mere purpose of defeating a right of action without a trial on the merits." Plaintiff in error's purpose is manifestly one of delay. It removed the cause and then sought to remand it. It seeks to prevent an adjudication of the controversy. Defendant in error's motion to dismiss the writ, affirm the judgment with costs, and award him damages in the sum of ten per cent. of the judgment by reason

of the writ's being sued out manifestly for the purpose of delay, should be granted.

Respectfully submitted,

JOHN ARTHUR, AND

L. H. WHEELER,

Counsel for Defendant in Error.

NORTH AMERICAN TRANSPORTATION & TRADING COMPANY *v.* MORRISON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

No. 203. Submitted March 20, 1900.—Decided May 21, 1900.

Where a plaintiff asserts, as his cause of action, a claim which he cannot be legally permitted to sustain by evidence, a mere *ad damnum* clause will not confer jurisdiction on the Circuit Court, but the court on motion or demurrer, or of its own motion, may dismiss the suit.

In the circumstances disclosed by the plaintiff's declaration, and in the certificates of the trial judge, the defendant company, though liable in a court of competent jurisdiction for the other claims asserted, cannot be held for the amount of wages or profits which the plaintiff suggests he might have earned had he reached Dawson City.

THIS was an action originally brought in December, 1897, in the Superior Court of the State of Washington for King County, by Donald Morrison against the North American Transportation and Trading Company, and subsequently, on petition of the defendant company, removed to the Circuit Court of the United States for the District of Washington. To the declaration, containing several counts, the defendant demurred. The demurrer was overruled, and the cause was tried before the District Judge and a jury. After verdict and judgment in favor of the plaintiff, the District Judge certified the following statement of facts and questions of jurisdiction to this court:

"I, C. H. Hanford, District Judge, presiding in the Circuit Court aforesaid, and the judge before whom the above-entitled cause was tried, do now, on the 29th day of December, 1898, being the December term, at which the judgment and verdict were entered herein, certify as follows:

"Morrison, the plaintiff, alleging himself to be a citizen and resident of the State of Minnesota, began this action in the Superior Court of King County, State of Washington, against the defendant, alleging it to be a corporation organized and ex-

isting under the laws of the State of Illinois, and engaged in business in the State of Washington. The suit was upon eight causes of action, the first on plaintiff's own account, the other on account of seven alleged assignors of plaintiff. The citizenship of these assignors was nowhere alleged.

"Defendant removed the case to this court on the ground of diversity of citizenship between it and plaintiff Morrison, and the involving of a sum exceeding two thousand dollars, exclusive of interest and costs. After removal defendant demurred to each cause of action in the complaint as not sufficient to constitute a cause of action, and as to the last seven causes of action on the additional ground that the court had no jurisdiction to hear it, and this was overruled, with exception to defendant. Issue was then joined, and, after two trials, judgment was entered as now complained of in error in the sum of $2119.50. After the verdict and before judgment defendant moved to dismiss or remand the whole cause and each cause of action on the ground that as to the first cause of action it did not involve two thousand dollars, exclusive of interest and costs, and as to the second and each subsequent cause of action —that is to say, as to the assigned causes of action—that each of these did not involve two thousand dollars, exclusive of interest and costs, and because, also, it did not appear that proper diversity of citizenship existed at the time of the commencement of the action, or at the time of its removal, between the assignors of plaintiff and defendant so as to confer jurisdiction upon the Federal court; which said motion to dismiss and remand was denied, with exception to defendant.

"The original complaint shows that the aggregate sum sued for by Morrison was $18,173.50, divided, as already stated, into eight causes of action. The suit was upon eight contracts of carriage, between defendant as a carrier and plaintiff and his seven assignors, from Seattle to Dawson City, by way of St. Michaels and the Yukon River, which contracts were alleged to have been broken by the carrier by failure and refusal to transport the passengers farther than Fort Yukon on the river.

"The first cause of action — that of plaintiff himself — alleged himself to be a citizen and a resident of Minnesota and defend-

ant a corporation organized and existing under the laws of the State of Illinois. The contract was alleged to have been made at Seattle on the 30th day of July, 1897, and the agreed date of the delivery of the plaintiff at Dawson by the carrier was alleged to be September 15, 1897, and this suit was brought on the 17th day of November, 1897. On the breach of the contract at Fort Yukon, plaintiff alleged himself compelled to return to Seattle. The damages claimed by him were as follows: (*a*) The price of his ticket from Seattle to Dawson City, $200.00; (*b*) $72.50, returning to Seattle after the breach of contract at Fort Yukon; (*c*) expense of one dollar a day and loss of time at three dollars a day at Seattle since his return there, the 18th day of October, 1897; (*d*) three dollars a day from the 30th day of July, 1897, which he could have earned if he had not started on the journey at all; (*e*) fifteen dollars a day which he could have earned for a year at Dawson after the 15th day of September, 1897; (*f*) lost baggage, $29.50; the total prayer of this cause of action being $2301.75.

"The second and subsequent causes of action, being the assigned causes, arose on exactly similar contracts of carriage. The citizenship of the respective assignors was not averred. The damages claimed were exactly the same as those claimed by plaintiff himself, excepting that none of the assignors claimed the item of lost baggage, and that the item of cost in returning from Fort Yukon to Seattle was as low as $61.50 in some instances, and as high as $103.25 in others. The lowest sum claimed by any of the assignors as his total damage was $2261.25, and the highest claimed was $2303.25.

"Neither in the original nor the assigned causes of action was it alleged that any of these passengers had ever lived in Dawson before, had any previous engagement or business there, or any promise of employment, the allegation in each cause of action as to the passenger's damage in this respect being that 'he could have obtained employment and engaged in business by him competent to perform and transact at or about said Dawson City, and thereby secured wages and profits at the rate of fifteen dollars per day continuously from September 15, 1897, for the period of the year thence next ensuing,' and that 'he

has wholly lost all of said employment and time, and all of said wages and profits, to his damage in the sum of $2000.' It was not alleged what, if any, occupation either plaintiff or any of his assignors had before departure on the journey, nor was it alleged what occupation was expected at the point of destination, or that any expected occupation was communicated to the defendant.

"Now, therefore, I do certify to the Supreme Court the following question of jurisdiction, as follows:

"Whether the motions to dismiss and to remand should have been granted because at the time of removal to this court the cause was one of which this court could not take jurisdiction — that is to say, whether —

"(*a*) In each of the causes of action the sum or value of the matter actually in dispute, as shown in the pleadings was less than two thousand dollars, exclusive of interest and costs, and a controversy was involved substantially within the jurisdiction of this court; and whether —

"(*b*) If the foregoing be answered in the affirmative, the amounts claimed in the assigned causes of action could be united to that in the first to make up the jurisdictional amount, the citizenship of the assignors not being alleged; and whether —

"(*c*) Supposing the jurisdictional amount was sufficient in each cause of action, the case was even then removable to this court when the necessary diversity of citizenship was alleged only in the first cause of action, and was not alleged in those assigned."

Mr. Frederick Bausman for plaintiff in error.

Mr. John Arthur and *Mr. L. H. Wheeler* for defendant in error.

Mr. Justice Shiras, after stating the case, delivered the opinion of the court.

This is a suit by Donald Morrison, alleging himself to be a citizen of the State of Minnesota, against the North American

Transportation and Trading Company, a corporation of the State of Illinois, for damages arising out of a breach of a contract whereby the transportation company had agreed to carry the plaintiff and his baggage from Seattle in the State of Washington to Dawson City in the Northwest Territory, in the Dominion of Canada.

It is conceded that the defendant company failed, without sufficient excuse, to fulfill its engagement, and the question upon which the jurisdiction of the court below depended is as to the nature and amount of the damages to which the plaintiff is entitled. The allegations in the complaint in that respect were, first, the sum paid by the plaintiff as a fare being $200; second, the expenses caused by having to return to Seattle, amounting to $72.50; third, the wages which he could and would have earned at Seattle if he had not proceeded upon the attempted journey, being wages at the rate of three dollars per day during all the time intervening between August 3, 1897, and November 17, 1897, amounting to about $320; fourth, the loss of a certain portion of plaintiff's baggage, amounting to $29.25; and, fifth, the loss occasioned plaintiff by the defendant's failure to transport him to Dawson City, "where the plaintiff could have obtained employment and engaged in business which he was competent to perform and transact, at or about Dawson City, and thereby have secured wages and profits at the rate of fifteen dollars per day continuously from September 15, 1897, for the period of the year next ensuing;" "by reason whereof there is due and owing the plaintiff from the defendant by reason of the premises, for said expenditures, outlay and damages, the sum of two thousand three hundred and one dollars and seventy-five cents."

It was obvious, on the face of the plaintiff's complaint, that if he was not entitled to recover the money which he alleged "he could have earned and secured by obtaining employment and engaging in business at or about Dawson City," the amount necessary to give the Circuit Court jurisdiction was not involved.

While it has sometimes been said that it is the amount claimed by the plaintiff in his declaration that brings his case within the jurisdiction of the Circuit Court, that was in suits for un-

liquidated damages, in which the amount which the plaintiff was entitled to recover was a question for the jury; an inspection of the declaration did not disclose and could not disclose but that the plaintiff was entitled to recover the amount claimed, and hence, even if the jury found a verdict in a sum less than the jurisdictional amount, the jurisdiction of the court would not be defeated. *Barry* v. *Edmunds*, 116 U. S. 550; *Scott* v. *Donald*, 165 U. S. 58, 89.

But where the plaintiff asserts, as his cause of action, a claim which he cannot be legally permitted to sustain by evidence, a mere *ad damnum* clause will not confer jurisdiction on the Circuit Court, but the court on motion or demurrer, or of its own motion, may dismiss the suit. And such, we think, was the present case.

We do not consider it necessary to enter upon a discussion of the rule that a person is not to be held responsible in damages for the remote consequences of every negligent act, but only for those which are proximate or natural, and shall content ourselves by stating our conclusion that, in the circumstances disclosed by the plaintiff's declaration and in the certificate of the trial judge, the defendant company, though liable in a court of competent jurisdiction for the other claims asserted, cannot be held for the amount of wages or profits which the plaintiff suggests he might have earned had he reached Dawson City.

In the District Judge's certificate it is stated that the plaintiff did not allege that he had ever lived in Dawson City before, or had any previous engagement or business there or any promise of employment; that it was not alleged what, if any, occupation the plaintiff had before his departure on the journey, nor what occupation was expected at the point of destination, or that any expected occupation or employment was communicated to the defendant company.

The plaintiff was traveling to a land of promise, hoping to there procure some occupation, he knew not what, or to engage in some business, he knew not what. The result of such an adventure cannot be foretold, and the plaintiff's anticipations afford no safe ground on which to base a claim for damages.

If, then, the plaintiff in respect to his own claim, did not dis-

close a case of which the Circuit Court had jurisdiction, did he overcome that difficulty by the additional counts in which he alleged himself to be the assignee of several other voyagers who had suffered loss and damages similar to those claimed by him on his own behalf? The citizenship of the assignors was not alleged, and the greater portion of the respective claims consisted of matter which we have held in reference to plaintiff's own claim to be too remote and uncertain to be allowed.

It is somewhat uncertain, upon the facts alleged in the declaration and those stated to us in the certificate of the District Judge, whether if all the claims, as well those assigned and those held by the plaintiff in his own right, omitting those which we have held to be too remote and uncertain, were aggregated, they would reach the necessary jurisdictional amount. But however that may be, as it is not alleged that the assignors could have themselves prosecuted suit in the Circuit Court, it is the settled construction of the statutes of the United States that the suit cannot be maintained in favor of the assignee.

Serè v. *Pitot*, 6 Cranch, 332, was an action commenced to foreclose a mortgage given by a citizen of Louisiana to another citizen of the same State. The language of the judiciary act of 1789 was as follows: "Nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made." 1 Stat. 78. The plaintiff was the general assignee in insolvency of the mortgagor, and was an alien; and it was said by Chief Justice Marshall, delivering the opinion of the court:

"Without doubt assignable paper, being the chose in action most usually transferred, was in the mind of the legislature when the law was framed, and the words of the provision are, therefore, best adapted to that class of assignments. But there is no reason to believe that the legislature were not equally disposed to except from the jurisdiction of the Federal courts those who could sue in virtue of equitable assignments and those who could sue in virtue of legal assignments. The assignee of all the open accounts of a merchant might, under certain circumstances, be

permitted to sue in equity in his own name, and there would be as much reason to exclude him from the Federal courts as to exclude the same person when the assignee of a particular note. The term 'other chose in action' is broad enough to comprehend either case, and the word 'contents' is too ambiguous in its import to restrain that general term. The contents of a note are the sums it shows to be due, and the same, without much violence to the language, can be said of an account."

And the same construction was put upon the language of the act of August 13, 1888, c. 866, 25 Stat. 433. *Mexican National Railroad* v. *Davidson*, 157 U. S. 201.

We do not think that it was competent for the plaintiff to add to his own cause of action, in order to obtain jurisdiction in the Circuit Court, claims assigned by those whose citizenship and residence did not appear either in the complaint or in the petition for removal. As, however, the plaintiff brought his action in the state court, where he was entitled to join the assigned claims with his own, and as the case was removed into the Federal court at the instance of the defendant company, whose motion to remand the case we are now obliged to sustain, we impose the costs in the Circuit Court and in this court on the North American Transportation and Trading Company, the plaintiff in error.

These views render it needless to answer severally the questions certified.

Accordingly the judgment of the Circuit Court is reversed, and the cause is remanded to that court, with directions to remand the cause to the state court.